

ZONING BOARD OF APPEALS

FEBRUARY 18, 2014 MEETING MINUTES

PRESENT: Chairperson Ron Nolland, Scott DeMane Michelle LaBounty,
Maurica Gilbert, Kathy Latinville (Alt.)

ABSENT: Connie Fisher, Karl Weiss, (Alt.)

ALSO PRESENT: Joseph McMahon, Building Inspector

Appeal #1987 Aaron Ovios
Pat Holcombe
Appeal #1993 James Moser, Moser Engineering
Appeal #1995 Dr. Michael Davey
Joseph Krupka, AEDA
Appeal #1996 Michael Racine

Mr. Nolland called the meeting to order at 7:01 PM. For Appeal #1985, Ms. Latinville lives within 500' of Healey Avenue. Technically she does not have to recuse herself. He advised this is a 5 person board, which consists of 5 regular members and 2 alternate members. For each application, 3 positive votes are needed to carry any motion. If the applicant thinks there may be a conflict, there will be 4 people voting. He asked is the applicant wanted her to stay and vote. Mr. Krupka acknowledged he has no objection.

The agenda will be heard in order they were advertised.

The below items were on tonight's agenda.

APPEAL	APPLICANT	REQUEST
1987	62 BRINKERHOFF STREET, LLC 62 BRINKERHOFF STREET	CLASS A VARIANCE AMEND CURRENT VARIANCE TO MIRROR PREVIOUSLY GRANTED VARIANCE WHICH EXPIRED
1993	NEW JERUSALEM BAPTIST CHURCH 83 OAK STREET	CLASS B VARIANCE EXPANSION OF CHURCH AND PARKING/DRIVEWAY AREA WHICH REDUCES OPEN SPACE TO 43% (50% MINIMUM IS REQUIRED)
1995	MICHAEL DAVEY 8 HEALEY AVENUE	CLASS B VARIANCE AREA VARIANCE FOR THE RECONFIGURING OF THIS LOT, COVERAGE, OPEN SPACE, FRONT YARD
1996	MICHAEL RACINE 18 STETSON AVENUE	CLASS B VARIANCE AREA VARIANCE, FRONT PORCH WILL BE WITHIN FRONT YARD SETBACK REQUIREMENT

The **first** item heard was Appeal #1987, 62 Brinkerhoff LLC, 62 Brinkerhoff Street for a Class A Variance – Use Variance to create 5 apartments in RH Zoning District which allows only one unit.

[Meter 2:57]

Mr. Ovios was present for this Appeal representing 62 Brinkerhoff Street. Pat Holcombe from Century 21 was also authorized to represent this Appeal.

Mr. Nolland advised this was postponed in November so further information could be received regarding the number of apartments they wanted in the building. A variance was given previously for 3 apartments. The applicant since then has provided the previous application and all the information as to how it has been affected. Mr. Nolland has reviewed most of it. It does seem like the financials are about the same.

Mr. Ovios stated Robert M. Sutherland, PC has been asked to represent them. Based on their comments from the prior meeting and the concerns of the financial hardship and justifications to do a 5 unit building – there was concerns of the character of the neighborhood and why keep it commercial on the ground floor. They listened to those concerns and after a meeting with their client and the prospective buyer, they agreed everyone could live with the 2008 variance.

In 2008 variance the board reviewed it along with all the supporting documentation. The financials, proof of advertisement, etc. and what they are saying is with the current application and information provided by Mr. Bruno and Holcombe, it shows the financials haven't really changed since 2008. Since 2008, the revenue income vs. the expenses have basically stayed the same. They did not have a new appraisal done like in 2008 but nothing has changed. The paperwork submitted demonstrates that nothing has changed, they've advertised it for sale and again, this has been the only legitimate buyer. The condition is to basically be allowed to put residential on the second floor, similar to what was approved in 2008.

Tonight the applicant is looking for the ability to re-affirm the 2008 variance with no amendments or changes to what was approved in 2008.

Mrs. Labounty asked about renting the first floor. Mr. Ovios stated due to it being commercial, it will probably be professional offices similar to what is there now. The prospective buyer is willing to take that risk and continue to try to rent that as commercial space, knowing that he can only do residential on the second floor.

Mrs. Labounty said previously a hair dresser in that spot, which was not an approved use. Mr. Ovios added there is a lot of lawyer's office around this neighborhood. The prospective buyers own other commercial land that does rent to that type of tenant.

Ms. Gilbert reminded Mr. Ovios that the applicant knows he cannot come back to the zoning board. Mr. Ovios said he is not coming back to this board. It is what it is. The hardship is there and he fully acknowledges that. Ms. Gilbert just wanted to make sure. [Meter 7:50]

Mr. Nolland added the multi-family is what the variance is for. It's not commercial but it's professional office. [Further comments by Mr. Nolland regarding doctor's office, medical offices, definition of medical clinics, massage therapy.]

Ms. Gilbert said they want to make sure how the proposed apartments are structured. Mr. Ovios said there will be (1) - 2 bedroom and (2) - 1 bedroom.

This is a use variance, which is more restrictive. The hardest part being financial hardship. It has not changed from the last time.

Mr. Nolland explained this is in a sense the exact same application as 2008. Nothing has changed, except further financial information.

PUBLIC COMMENTS: [Meter 10:55]

There being none, the public hearing portion was then closed.

Ms. Gilbert asked that the client re-sign and re-date the Long Form SEQR. Mr. Ovios added the new SEQR was submitted in December 2013.

The new Long Form SEQR was then discussed.

Changes: 1-2 bedroom and 2-1 bedrooms, total of 4 bedrooms;
#7 changed to yes;
7a. was changed to March from February;
C5 changed to 1 unit and professional office;
Needs to be signed.

Mr. Ovios stated based on the above changes, he will have the applicant sign and initial the changes and submitted to the Building Inspector.

No parking variance is needed. Six (6) spaces are needed and provided.

MOTION(s) APPEAL #1987:

By Ms. Gilbert, seconded by Mrs. Labounty

***REGARDING THE LONG FORM SEQR FOR 62 BRINKERHOFF STREET THAT
HAS BEEN GIVEN TO US AS CHANGED, THAT THE BOARD FINDS NO ADVERSE
ENVIRONMENTAL IMPACT***

ALL IN FAVOR

Mr. Nolland asked if there were any other questions from the Board. Mrs. Labounty advised she has voiced her concerns that there will be a new owner and they need to understand what is and what is not allowed.

Ms. Gilbert commented that the board here finds that they have a lack of reasonable return based on financial statements that go back to 2005 all the way up to 2013, having already proven 2005 – 2008 once and then updating that financial information. They have also demonstrated the hardship being unique due to the size of the building and the fact that it's seemingly much larger than some of its neighbors and hard to rent. Since this is a relatively small variance in terms of occupancy and not changing the outside of the building and the situation has not been self-created and is beyond their control.

MOTION:

By Ms. Gilbert, seconded by Mrs. Labounty

FOR APPEAL #1987, BASED ON THE ABOVE COMMENTS, THAT THE BOARD ACTUALLY RE-GRANT THE VARIANCE AS WAS GIVEN MARCH 17, 2008, ALLOWING THEM TO HAVE 2 ONE BEDROOM UNITS AND 1 TWO BEDROOM AS RESIDENCES ON THE SECOND FLOOR KEEPING THE FIRST FLOOR INTACT AS NON-RESIDENTIAL USES ALLOWED IN THE NEIGHBORHOOD.

Mr. DeMane questioned is this appeal 1987 or are they re-affirming it because there is no mention of 1987. Mr. Nolland said this is 1987.

ALL IN FAVOR: 5

OPPOSED: 0

MOTION PASSED

The **second** item heard was Appeal #1993 New Jerusalem Baptist Church, 83 Oak Street for a Class B Variance expansion of Church and Parking/Driveway area, which reduced open space to 43%, 50% minimum is required.

[Meter 24:30]

Mr. Nolland advised this was postponed from last month due to needing a new Short Form SEQR. He appreciates the applicant has already made changes to the plan.

When the state fills out the SEQR, it checks off various items. One item check said this was a remediation site because they were within 2000 feet and an archeological dig. This was not accurate. The City Engineer, Building Inspector and Chairman met regarding the remediation item on the SEQR. If in fact there was to be remediation on a site, it would still not be a Type 1 Action. There would have to be recommendations during the permit process that the contractor be aware of it and stop any digging. Most of the remediation's are for soil.

There were no public comments regarding this appeal. [Meter 27:07]

Changed: Answers about the remediation;
Answer on #5 to no;
Part II – change no to small impacts for all questions.
#17 on page 2;
#20 on page 3, no from a yes.

Ms. Gilbert clarified for #20 they are changing that based on a list provided to them by the Department of Environmental Conservation and find that the “yes” answer is correct. Mr. Moser added he went to the website and it spit the answers out and where-ever he could, he put the right answers in.

MOTION:

By Ms. Gilbert, seconded by Mr. DeMane

THAT THE BOARD IS OVER-RIDING THE ANSWER ON QUESTION #12B OF THE SHORT ENVIRONMENTAL ASSESSMENT FORM, CHANGING THE STATES ANSWER FROM YES – THAT IT'S AN ARCHEOLOGICAL SENSITIVE AREA - TO NO, BASED ON THEIR OWN PERSONAL KNOWLEDGE OF THE AREA AND THE FACT THAT DEC WILL NOT RELEASE THE LIST OF ARCHEOLOGICAL SENSITIVE AREAS BECAUSE IT'S A SEQR LIST. WE HAVE TO USE OUR OWN KNOWLEDGE OF THE AREAS. THE MOTION CHANGES THE ANSWER, OVER-RIDING NEW YORK STATES ANSWER FROM YES TO NO

ALL IN FAVOR

MOTION:

By Ms. Gilbert, seconded by Mr. DeMane

REGARDING THE STATE'S ANSWER FOR QUESTION #20, WHICH HAS BEEN ANSWERED YES AND THE BOARD WOULD LIKE TO MAKE IT NO, BASED ON THE LIST PROVIDED BY DEC BECAUSE THEY ARE USING A 2000' CIRCLE AROUND EVERY SITE AND THAT THIS PARTICULAR SITE DOES NOT FALL UNDER THIS, AND THEY FIND THE ANSWER TO BE CHANGED TO NO

ALL IN FAVOR

MOTION:

By Ms. Gilbert, seconded by Mrs. Labounty

THAT PART II IS THE RESPONSIBILITY OF THE ZONING BOARD AS LEAD AGENCY, AND FOR QUESTIONS BASED ON THE ANSWERS ABOVE AND THEIR PERSONAL KNOWLEDGE, THE ANSWERS TO QUESTIONS 1-11 ANSWERED BY THIS BOARD WILL BE NO OR SMALL IMPACT MAY OCCUR.

ALL IN FAVOR

MOTION ON SHORT FORM EAF:

By Ms. Gilbert, seconded by Mrs. Labounty

THE BOARD CHOOSES TO CHECK THE BOX THAT THEY HAVE DETERMINED BASED ON THE INFORMATION ABOVE AND ANY SUPPORTING DOCUMENTATION THAT THE PROPOSED ACTION WILL NOT RESULT IN ANY SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT

ALL IN FAVOR

Mr. Nolland said this application is deficient on open space and parking. The variance is for 4 parking spaces. Twenty nine (29) are required and twenty-five (25) are provided.

The open space variance is the applicant proposing 43%, where 50% is required.

Ms. Gilbert said this is a good layout and the "one way in" will also help with traffic on Oak Street. Based on this application and everything looked at in this meeting and the prior meeting, she made the following motion:

MOTION:

By Ms. Gilbert, seconded by Mr. DeMane

TO ALLOW UNDER APPEAL #1993 REGARDING 83 OAK STREET, NEW JERUSALEM BAPTIST CHURCH, TO BE DEFICIENT BY 4 SPACES ALLOWING ONLY 25 TO BE PROVIDED, WHERE 29 HAS BEEN CALCULATED, AND TO ALLOW ONLY 43% OPEN SPACE WHERE 50% IS REQUIRED

ALL IN FAVOR: 5

OPPOSED: 0

MOTION PASSED

The **third** item heard was Appeal #1995 Michael Davey, 8 Healey Avenue for a Class B Variance for the reconfiguring of this lot, coverage, open space and front yard.

[Meter 38:43]

Mr. Joe Krupka was represented this appeal.

Mr. Nolland stated the only variance was for the 2 lots inside the building. Everything else complies. He discussed commercial space within the City. There are now 3 non-conforming lots even though grandfathered in and are now being turned into 2 non-conforming lots. Mr. Krupka agreed.

Mr. Nolland continued this lot technically does not front on a public way. Mr. Krupka agreed. Mr. McMahon added technically those 2 internal parcels would not.

Mr. Nolland stated the applicant is creating is the same thing as a townhouse with 0 lot lines. He referenced different parcels with 0 lot lines. [Meter 41:35]

Ms. Gilbert stated under the code, they should not open up the SEQR part of the hearing until after the public hearing. We should do SEQR first.

SEQR Discussion.

On Page 2 of 4, change 5b to “no.”

MOTION:

By Ms. Gilbert, seconded by Ms. Latinville

THE BOARD IS CHANGING ANSWER 5A&B FROM “NO” TO “YES” BECAUSE THEY’VE DISCOVERED THEIR ANSWERS ARE NEEDED, THEREFORE THE ANSWER IS NO, IN SECTION 1.

ALL IN FAVOR

MOTION PART 2:

By Ms. Gilbert, seconded by Mr. DeMane

FOR PART 2, BASED ON THE ANSWERS AND THE INFORMATION PROVIDED PER PART 1, THE BOARD FINDS THAT THE ANSWERS TO QUESTIONS 1-11 ARE UNIFORMLY NO OR SMALL IMPACT MAY OCCUR.

ALL IN FAVOR

MOTION:

By Ms. Gilbert, seconded by Mrs. Labounty

THE BOARD FINDS THAT THE ANSWER IN THE BOTTOM SECTION BOX TO BE CHECKED IS BASED ON THE INFORMATION AND ANALYSIS FIND ANY SUPPORTING DOCUMENTATION THAT THE PROPOSED ACTION WILL NOT RESULT IN SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS.

ALL IN FAVOR

Mr. Nolland then asked if there were any public comments regarding Appeal #1995 8 Healey Avenue a Class B Variance to allow the 2 interior lots inside the building to be allowed to have 0 lot lines and exceed open space. There were no public comments.

MOTION:

By Ms. Gilbert, Ms. Latinville

FOR APPEAL #1995, MICHAEL DAVEY 8 HEALEY AVENUE - TO ALLOW A 0 LOT LINE BETWEEN THE TWO NEWLY CREATED PARCELS AND THE COMMON AREA OF THE THIRD PARCEL, THAT THERE WILL BE NO OPEN SPACE AND 100% COVERAGE ON THE LOT, RECOGNIZING THAT IT'S NOT ABUTTING A PUBLIC WAY, AND THE FRONT YARD SET BACK WILL BE ALLOWED TO BE 0.

ALL IN FAVOR: 5

OPPOSED: 0

MOTION PASSED

Dr. Davey asked about the variance time frame. Ms. Gilbert explained the key to substantially start within 6 months of the last permits needed. If within 6 months the applicant cannot start, come back to the Zoning Board and they will give an extension of the variance.

[Meter 54:12]

The **final** item on the agenda was Appeal #1996, Michael Racine, 18 Stetson Avenue for a Class B Area Variance, front porch will be within front yard setback requirements.

This is an R-2 District.

Mr. Racine stated the porch will be exactly the same footprint in the front and 6-8 inches wide on the side. It will not be enclosed. It will have a roof and a deck.

SEQR DISCUSSION:

Page 1, Question 2. Changed from Yes to “No,” add “City of Plattsburgh Building Permit;”

Page 1, Question 4. Add “School.”

Page 2, Question 5. Change yes to a “No.”

Page 2, Question 8. b. will be “yes,” and c. will be “yes.”

Page 2, Question 12. b. changed to “no.”

MOTION:

By Ms. Gilbert, seconded by Mr. DeMane

TO CHANGE 12 b. TO NO, BASED ON THE BOARD’S EXPERIENCE AND KNOWLEDGE

ALL IN FAVOR

Page 2, Question 13 b. will be checked “no.”

Page 2, Question 17 b. leave unanswered. Further discussion by the Board changed 17. to “yes,” 17a will be “no and 17b. to be “yes.”

MOTION:

By Ms. Gilbert, seconded by Mrs. Labounty

BASED ON THE MODIFIED ANSWERS ABOVE, THE BOARD FINDS FOR PART II, QUESTION 1-11 WILL BE ANSWERED NO OR SMALL IMPACT MAY OCCUR.

ALL IN FAVOR

MOTION:

By Ms. Gilbert, seconded by Mr. DeMane

THAT BOARD FINDS BASED ON INFORMATION AND THE ANALYSIS ABOVE AND ANY SUPPORTING DOCUMENTATION THAT THE PROPOSED ACTION WILL NOT RESULT IN AN SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT

ALL IN FAVOR

There were no public comments regarding this appeal. [Meter 1:04:33]

Mr. Nolland asked if this porch will look like all other porches on Stetson Avenue. Mr. Racine said some have wrap-around porches. This building will be 2-family. Both apartments exit to front. Both can use the porch.

MOTION:

By Mrs. Labounty, seconded by Ms. Latinville

IN REGARDS TO APPEAL 1996, MICHAEL RACINE AT 18 STETSON AVENUE, TO GRANT A CLASS B VARIANCE TO ALLOW AN 8 X 22 COVERED PORCH IN THE FRONT YARD SETBACK WITH THE STIPULATION THAT IT MUST NOT BE ENCLOSED

ALL IN FAVOR: 5

OPPOSED: 0

MOTION PASSED

MOTION:

By Ms. Gilbert, seconded by Mr. DeMane

TO APPROVE JANUARY 21, 2014 MINUTES

ALL IN FAVOR: 5

OPPOSED: 0

MOTION PASSED

MOTION TO ADJOURN:

By Mr. DeMane, seconded by Ms. Latinville

ALL IN FAVOR

MOTION PASSED

Meeting adjourned at 8:13 PM

For the purpose of this meeting, this meeting was recorded on the VIQ System in the Common Council Chambers. This is a true and accurate copy and transcription of the discussion.

Denise Nephew
Secretary
Zoning Board of Appeals